



January 4, 2002

Mr. Claud H. Drinnen
First Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2002-0061

Dear Mr. Drinnen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156858.

The City of Amarillo (the "city") received a request for incident reports and jail records for a named, but deceased individual (the "deceased"). You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that: (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). In Open Records Decision No. 638 (1996), this office said that a governmental body may show that litigation is reasonably anticipated when it receives a claim letter that it represents to be in compliance with the Texas Tort Claims Act

(the "TTCA"), Chapter 101 of the Civil Practice and Remedies Code. In this instance, you represent that the city received a notice of claim that complies with the TTCA. Thus, the city has met the first prong of the test in showing that litigation is reasonably anticipated.

However, the city has not met its burden with respect to the second prong of the test, showing that the information at issue relates to the anticipated litigation. In meeting this prong of the test, a governmental body must identify the issues in the litigation and explain how the information relates to those issues. *See* Open Records Decision No. 551 at 5 (1990). Here, after reviewing your brief and the submitted information, we are unclear regarding the issues in the anticipated litigation and therefore cannot determine whether the submitted information relates to those issues.¹ Consequently, the city may not withhold any of the submitted information under section 552.103.

We note that the submitted information contains what appears to be criminal history record information ("CHRI") that is protected from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The city must withhold all CHRI obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Further, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. Therefore, in this case, any CHRI obtained from the NCIC or the TCIC must be withheld pursuant to section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

We further note that included among the submitted information is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of

¹In your brief to this office dated October 22, 2001, you state that the notice of claim is attached to the brief. The copy of the brief we received, however, did not have the notice attached.

the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the city with two of the three pieces of information. Thus, you must withhold the accident report under sections 552.101 and 550.065(b). We have marked the documents accordingly.

The submitted information also contains driver's license and motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized by Chapter 730, Transportation Code.

You must withhold the Texas driver's license numbers, vehicle identification numbers, license plate numbers, and title information in the submitted documents under section 552.130, unless the information relates to the deceased.² Section 552.130 is designed to protect the privacy interest of the individual, and because that right of privacy is purely personal, it lapses upon death. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Thus, the deceased's section 552.130 information may not be withheld. We have marked the documents accordingly.

Finally, we also note that the submitted records contain social security numbers. A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). Because this federal provision is intended to protect the privacy interests of

²We note that the submitted documents contain driver's license information issued by an agency of a state other than Texas; this information is not protected under section 552.130.

individuals, this provision does not encompass the social security number of a deceased individual. However, the submitted records contain other social security numbers that may be confidential under section 552.101 in conjunction with the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers in question were obtained or are maintained pursuant to such a law and are therefore confidential under the federal law. We caution you, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any of the social security numbers other than that of the deceased, the city should ensure that the numbers were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In sum, the city may not withhold the submitted information under section 552.103. However, the city must withhold any CHRI obtained from the NCIC or the TCIC pursuant to section 552.101 in conjunction with federal law and chapter 411 of the Government Code. Likewise, the city must withhold the accident report we have marked under 552.101 in conjunction with section 550.065 of the Transportation Code. The city must also withhold Texas driver's license numbers, vehicle identification numbers, license plate numbers, and title information, except for that of the deceased. The social security numbers of individuals other than the deceased must be withheld only if they were obtained and maintained pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

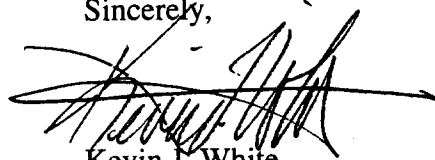
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin J. White', with a long horizontal stroke extending to the right.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 156858

Enc. Marked documents

c: Ms. Ruby Bulls
Legal Assistant
Smith, Wilson & Duncan, PC
1111 West 18th Street
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(w/o enclosures)